

PUBLIC UTILITY TAX
RCW 82.16

Tax Base Gross income derived from operation of public and privately owned utilities, including the general categories of transportation, communications and the supply of energy and water. Income from utility operations is taxed under the public utility tax and is in lieu of the B&O tax; other income of the utility firm (e.g. retail sales of tangible personal property) is subject to B&O tax. Unlike the B&O tax which pyramids (i.e. different firms may be taxable on income derived from the same product), the public utility tax applies only on sales to consumers.

Tax Rate Five different rates apply, depending upon the specific utility activity. The current rates, including permanent surtaxes, are:

Distribution of water	5.029%
Generation/distribution of electrical power.....	3.873
Telegraph companies, distribution of natural gas, and collection of sewerage	3.852
Urban transportation and watercraft vessels under 65 feet in length.....	0.642
Railroads, railroad car companies, motor transportation and all other public service businesses	1.926

Motor and urban transportation include the operation of motor driven vehicles used in transporting persons or property on a for-hire basis. The urban classification applies when the origination and destination: (1) is within the same city, (2) extends no more than five miles beyond the same city, or (3) is between cities that are no more than five miles apart. Other for-hire transportation is reported under the motor classification.

Levied by State

Administration Department of Revenue. Utility firms report either monthly, quarterly, or annually by filing the combined excise tax return (Form # 40 2406).

Recent Collections (\$000)

<u>Fiscal Year</u>	<u>Collections</u>	<u>% Change</u>	<u>% of All State Taxes</u>
2001	\$267,624	8.6%	2.3%
2000	246,383	11.3	2.1
1999	221,397	4.5	1.9
1998	211,783	4.2	1.9
1997	203,178	1.7	1.9
1996	199,782	5.4	2.0
1995	189,590	12.5	2.0
1994	168,551	5.2	1.9
1993	160,180	13.4	1.9
1992	141,250	2.9	1.8

Distribution of Receipts

Most of the public utility tax goes to the state general fund (96.8 percent in fiscal year 2001). Certain receipts are earmarked for the public works assistance account which provides financial assistance to local government for maintenance of public works facilities: (1) 20 percent of the basic 4.7 percent tax on water distribution, and (2) 60 percent of the basic 3.6 percent tax on sewerage collection (both excluding the 7 percent surtax).

Exemptions, Deductions and Credits

EXAMPLES OF EXEMPTIONS AND CREDITS

- income less than \$500 per month;
- providing ride-sharing for commuters and transportation of elderly and handicapped persons;
- income of small irrigation districts;
- credit for one-half of contributions made to rural electric utility economic development projects;
- credit for income of electric utilities from sales of power to DSIs;
- credit for electric and natural gas utilities that provide billing discounts to low-income customers.

EXAMPLES OF DEDUCTIONS

- purchases for resale, cash discounts and credit losses;
- receipts from taxes (municipal utilities pay the state utility tax, but may deduct local taxes levied to support the utility);
- income from interstate transportation of persons or property;
- expenditures for transit by King County (formerly Metro);
- payments by one utility to another for jointly providing the same service to customers;
- revenue derived from the distribution of water by irrigation districts;
- interstate transportation via "through freight billing" and shipments to ports for export;
- distribution of water by nonprofit water associations;
- processing and disposal of sewerage (public utility tax applies only to collection);
- costs of producing energy via cogeneration (projects begun before 1990) and expenditures for

- more efficient energy use;
- payments to residential builders and owners of new construction for costs of meeting the state energy code;
- payments by electric and gas utilities to customers for improved energy efficiency;
- exported power;
- a portion of the income for power companies whose customers are geographically dispersed;
- sales of power for resale, including to entities that are not subject to public utility tax;
- 75% of expenditures made to improve customers' efficiency of water use;
- 75% of income derived from supplying reclaimed water.

History

Utility operations were included under the 1933 Business Activities Tax. Rates were 3.0 percent for most utilities, 2.0 percent for distribution of gas, 0.5 percent for urban transportation and vessels and 1.5 percent for all other public services. Two years later the public utility tax was established as a separate tax from the B&O tax but the same rates were retained.

Surtaxes were applied in the following years: 1951 (10 percent), 1957 (increased to 20 percent); 1982 (4 percent in April, increased to 7 percent in July). Other major changes to the tax occurred as follows:

- 1971 - rate for distribution of gas increased from 2.4 to 3.0 percent;
- 1981 - competitive telephone service subject to sales tax instead of public utility;
- 1982 - preferential rate for distribution of gas was eliminated;
- 1983 - all telephone service is a retail sale subject to sales and B&O tax, rather than public utility tax.
- 1985 - funding for local public works via public utility tax: water distribution increased from 0.3852 to 0.5029 percent, collection of garbage transferred from B&O tax to 0.5029 percent public utility tax and collection of sewerage transferred from B&O tax to 0.3852 percent public utility tax;
- 1986 - garbage collection returned to B&O tax and new solid waste tax; warehousing transferred from public utility to B&O tax;
- 1989 - pursuant to a court decision in the Washington Water Power case, generation of electric power for sale out of state is exempt from public utility and B&O tax; rate increase from 0.3852 to 3.873 percent for power produced in Washington;
- 1993 - deduction for income that represents the cost of capital facilities received by municipal utilities from customers is repealed;
- 1994 - two new deductions established: (1) for payments by employers in conjunction with commuter trip reduction programs, and (2) a portion of the income of power companies whose customers are geographically dispersed, based on wholesale power costs and the state average electric power rate.
- 1996 - rate reduction from 3.852 to 1.926 percent for railroad and railroad car companies.
- 2001 - deduction provided for electric and natural gas companies that provide rate discounts to low income customers; tax credit for natural gas purchased to supply direct service industries (DSIs).

Discussion/Major Issues

During 2000 the public utility tax was reported by approximately 5,300 firms. The tax is essentially passed on to consumers for regulated utilities, since it is considered in setting rates that may be charged for utility service. Thus, the tax has the effect of being an indirect sales tax on utility services. Some utility services, such as power and water, are essential household expenditures. A consumption tax on these necessary services is quite regressive, because of the proportionately heavy impact for low income households.

The public utility tax on transportation generally applies only to trips that originate and terminate within the state. However, in-state passenger airline flights and flights that carry U.S. mail within the state are exempt per Excise Tax Advisory 321.16.179/224, issued April 1, 1991 which incorporated the conclusions of a U.S. Supreme Court decision. Transportation that crosses the state's boundaries is considered as interstate commerce and cannot be taxed according to the U.S. Constitution. However, it is believed by some that the state could develop a constitutional apportionment mechanism and tax the in-state portion of interstate trips.